

(Unofficial) TEXT OF REVISED REGULATIONS

13 N.Y.C.R.R. Part 11 as of February 1, 2021.

§ 11.1 General provisions and definitions

(a) Effective date. The revisions to this Part shall go into effect on February 1, 2021.

(b) Short title. Chapter 961 of the Laws of 1960, as amended, when referred to in all rules and regulations promulgated by the Attorney General relating thereto, shall be referred to as the "New York Investment Advisory Act."

(c) Administration. The Investor Protection Bureau of the Department of Law shall be responsible for the administration of the New York Investment Advisory Act. Whenever in this Part there is reference to a submission of filing with the Department of Law, this shall mean the Investor Protection Bureau, 28 Liberty Street, New York, NY 10005 or the designee.

(d) Designation. The Attorney General may by regulation, rule or order designate the web-based Investment Advisor Registration Depository ("IARD") or Central Registration Depository ("CRD") operated by the Financial Industry Regulatory Authority ("FINRA") to receive and store filings and collect related fees from investment advisers and investment adviser representatives, on behalf of the Attorney General. (Information regarding CRD is available at <https://www.finra.org>. Information regarding IARD is available at www.sec.gov and www.iard.com).

§ 11.2 Use of CRD/IARD

(a) Unless otherwise provided, all investment adviser and investment adviser representative applications, amendments, reports, notices, related filings and fees required to be filed with the Attorney General pursuant to the rules promulgated under this section, shall be filed electronically with and transmitted to CRD/IARD. The following additional conditions relate to such electronic filings:

(1) Electronic signature. When a signature or signatures are required by the particular instructions of any filing to be made through the CRD/IARD, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to CRD/IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.

(2) When filed. Solely for purposes of a filing made through CRD/IARD, a document is considered filed with the Attorney General when all fees are received and the filing is approved by the State.

(3) Electronic filing. Any documents or fees required to be filed with the Department of Law that are not permitted to be filed with or cannot be accepted by CRD/IARD shall be filed directly with the Department of Law.

(b) Approval Process. Filings made through the CRD/IARD system shall be reviewed for completeness by the CRD/IARD system. All applications for registration meeting all existing requirements and qualifications shall be reviewed on a case-by-case basis for approval. Advisors submitting the filings shall be notified of deficiencies and required to correct same. Failure to correct any deficiencies pursuant to sections 11.4 (a)-(h), 11.6, 11.7, 11.8, 11.9 or 11.14 of this Part, or other submissions within one hundred eighty (180) days from receipt by the Department of Law or its designee will result in the abandonment of the registration and will require a completely new filing. No refunds will be made for filings that are either withdrawn on a voluntary basis or abandoned as a result of the failure to correct deficiencies.

§ 11.3 Hardship exemptions

(a) This section provides two hardship exemptions from the requirements to make electronic filings as required by the rules.

(1) Temporary hardship exemption.

(i) Investment advisers registered or required to be registered under section 11.4(c) of this Part who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD may request a temporary hardship exemption from the requirements to file electronically.

(ii) To request a temporary hardship exemption, the investment adviser must:

(a) file form ADV-H (Application for Temporary or Continuing Hardship Exemption) (17-CFR 279.3) in paper format with the Department of Law, no later than one business day after the filing (that is the subject of the form ADV-H) was due; and

(b) submit the filing that is subject of the form ADV-H in electronic format to IARD no later than seven business days after the filing was due.

(iii) Effective date—upon filing. The temporary hardship exemption will be deemed effective upon receipt by the Department of Law of the complete form ADV-H. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the Department of Law.

(2) Continuing hardship exemption.

(i) Criteria for exemption. A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate that the electronic filing requirements of this rule are prohibitively burdensome.

(ii) To apply for a continuing hardship exemption, the investment adviser must:

(a) File form ADV-H (17 CFR 279.3) in paper format with the Department of Law at least 20 business days before a filing is due.

(iii) Effective date—upon approval. The exemption is effective upon approval by the Department of Law. The time period of the exemption may be no longer than one year after the date on which the form ADV -H is filed. If the Department of Law, approves the application, the investment adviser must, no later than five business days after the exemption approval date, submit filings to IARD in paper format (along with the appropriate processing fees) for the period of time for which the exemption is granted.

§ 11.4 Registration information

(a) Initial application. The application for initial registration as an investment adviser pursuant to these rules shall be made by completing Form ADV (Uniform Application for Investment Adviser Registration) (17 C.F.R. 279.1) in accordance with the form instructions and by filing the form with CRD/IARD. The application for initial registration as an investment adviser representative pursuant to these rules shall be made by completing Form U4 in accordance with the form instructions and by filing the form with CRD/IARD. (Both Form ADV: General Instructions and the General Instructions for Part 2 of Form ADV are published by the U.S. Securities and Exchange Commission, 100 F Street, NE Washington, DC 20549. Form U4 Uniform Application for Securities Industry Registration or Transfer General Instructions is published by FINRA, 1735 K St NW, Washington, DC 20006. These instructions are viewable at <https://ag.ny.gov/forms>).

(b) Time for filing. Unless an application for a new investment adviser representative is filed in accordance with subdivision (i), an investment adviser or investment adviser representative application must be filed with CRD/IARD and approved by the State prior to engaging in investment advisory activities in the State of New York.

(c) Where registration required. All investment advisers and solicitors with more than five (5) clients in the State of New York must make application to register as an investment adviser, unless such solicitor is a federally covered investment adviser, or is otherwise exempt from registration with the State under § 11.13. All principals, investment adviser representatives and supervisors must apply for registration in connection with their representation of any investment adviser or solicitor. All investment adviser representatives for a federally covered investment adviser must apply for registration in connection with their representation.

(d) Annual renewal. The application for annual renewal as an investment adviser, solicitor and investment adviser representative shall be filed with CRD/IARD. The application for annual renewal registration shall include the required fee and any other information the Department of Law may reasonably require.

(e) Length of registration. The registration is for a calendar year or for that remaining part of the calendar year in which it is submitted.

(f) Updates and amendments.

(1) Investment advisers and solicitors must file with CRD/IARD, in accordance with the instructions in the Form ADV, any amendments to the investment adviser's Form ADV.

(2) All investment adviser representatives, and all principals and supervisors for any investment adviser, must file Form U4 or U5, as appropriate, on CRD/IARD and must amend such forms in accordance with the respective form's instructions. (Form U5 Uniform Termination Notice for Securities Industry Registration General Instructions published by FINRA, 1735 K St NW, Washington, DC 20006 are viewable at <https://ag.ny.gov/forms>.)

(3) An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment.

(4) Investment advisers and solicitors must file with CRD/IARD, an updated Form ADV within ninety (90) days after the end of the investment adviser or solicitor's fiscal year.

(g) Completion of filing. An application for initial or renewal registration is not considered filed for purposes of these rules until the required fee and all required submissions have been received and accepted by the Department of Law or the designee.

(h) Single person firms set up as sole proprietorships need only pay the fee for the investment adviser, not the investment adviser representative, but must file both Form ADV and Form U4, and follow all other requirements for investment advisers and investment adviser representatives as detailed herein. The foregoing does not apply if the firm is incorporated or organized as a limited liability company.

(i) Implementation Period. Except as provided below, any person who, prior to February 1, 2021, was serving continuously and permissibly in any capacity covered under this Part, and who, through continued

service, is subject to the registration requirements under this Part on or after February 1, 2021, may continue such service without an approved registration until December 2, 2021 without violating the registration provisions of GBL § 359-eee or this Part, so long as a Form U4 requesting investment adviser representative registration in New York for that person is submitted on or before August 31, 2021. Should an applicant be notified of a non-examination related deficiency in the application, the applicant will have fourteen (14) days to correct such deficiency and communicate the correction to the Department of Law. Any applicant whose application is denied, or who fails to correct the deficiency and communicate the correction within fourteen (14) days, and who continues to engage in activity requiring registration after notification of such denial or expiration of those fourteen days, shall be in violation of this Part and GBL § 359-eee. Applicants with examination-related deficiencies must correct such deficiencies in accordance with the requirements of section 11.6 or 11.7 of this Part. Nothing in this section shall excuse, relieve or limit liability of any person who violated examination or registration requirements in existence prior to February 1, 2021, nor shall it provide any extension, grace period or waiver to such person.

§ 11.5 Notice filing requirements for federally covered investment advisers

(a) Notice filing. The notice filing for a federally covered investment adviser shall be filed with CRD/IARD on an electronically signed Form ADV (Uniform Application for Investment Adviser Registration (17 C.F.R. 279.1)). All federally covered investment advisers with more than five (5) clients in the State of New York must notice file. A notice filing of a federally covered investment adviser shall be deemed filed when the fee required and the Form ADV are filed with and accepted by CRD/IARD on behalf of the State.

(b) Renewal. The annual renewal of the notice filing for a federally covered investment adviser shall be filed with CRD/IARD. The renewal of the notice filing for a federally covered investment adviser shall be deemed filed when the fee required is filed and accepted on behalf of the state.

(c) Updates and amendments. A federally covered investment adviser must file with CRD/IARD, in accordance with the instructions in the Form ADV, any amendments to the federally covered investment adviser's Form ADV. A federally covered investment adviser shall submit their amendments pursuant to U.S. Securities and Exchange Commission requirements.

(d) Investment adviser representatives representing a federally covered investment adviser must satisfy examination requirements or receive a waiver, and must register in accordance with this Part.

§ 11.6 Investment adviser examination requirements

(a) Examination Requirement. Every principal of an investment adviser or solicitor, and every investment adviser representative, including persons representing solicitors, and every supervisor who is required to register in this jurisdiction and who does not qualify for a waiver pursuant to section 11.7 of this Part, must take and receive a passing grade within two (2) years prior to the date of filing registration information pursuant to section 11.4(c) on:

(1) the Uniform Investment Adviser Law Examination (Series 65 examination); or

(2) the Securities Industry Essentials Examination, the General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination).

(b) Extended Compliance Period. In accordance with 11.4(i), every natural person who, prior to February 1, 2021, was serving continuously and permissibly in any capacity covered under this Part, and who, through continued service, is subject to the registration and examination requirements of this Part on or after February 1, 2021, and who does not qualify for a waiver pursuant to section 11.7, must take and receive a passing grade by December 2, 2021 on the examinations required under paragraph (a) of this section.

§ 11.7 Waivers

(a) **Prior Registration.** A natural person who otherwise is required to meet the examination requirements of 11.6 of this Part shall be exempt from such requirements upon application to, and approval by, the Department of Law, provided that such person has been continuously registered to provide investment advice in any jurisdiction for a period of at least two (2) years prior to the date of filing registration information pursuant to section 11.4(c); has not had any lapse in registration exceeding two (2) years; and is not, and has not been, subject to any regulatory or civil action, proceeding or arbitration, either pending or in the preceding ten (10) years from the date of such application, that would require disclosure on Form U4.

(b) **Special Waiver.** Every natural person otherwise required to meet the examination requirements of 11.6(a) of this Part and who, in the regular course of business, acted as an investment adviser representative from a place of business in the State continuously and permissibly for at least two (2) years prior to February 1, 2021 and who is not eligible for any other waiver under this section, may be exempted from the provisions of section 11.6 of this Part upon application to, and approval by, the Department of Law. No person shall qualify for a waiver under this subdivision (b) if:

- (1) That person submits an application for registration after August 31, 2021; or
- (2) That person's investment advisory activities during the two (2) years preceding December 2, 2020 were limited to serving or acting as a solicitor; or
- (3) That person, for two (2) or more continuous years in the four (4) years preceding the filing of registration information, had ceased performing acts as defined in section 11.12(f) of this Part in the regular course of business from a place of business in the State; or
- (4) That person currently is or has been subject to any regulatory or civil action, proceeding or arbitration, either pending or in the preceding ten (10) years from the date of such application, that would require disclosure

on Form U4, or that person has been notified or has reason to believe that they currently are or remain the subject of a regulatory or law enforcement investigation related to investment related activities.

(c) Certification. The examination requirement of section 11.6 shall not apply to any natural person who currently holds one of the following professional designations in good standing:

- (1) Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.;
- (2) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;
- (3) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;
- (4) Chartered Financial Analyst (CFA) awarded by the Association for Investment Management Research;
- (5) Chartered Investment Counselor (CIC) awarded by the Investment Adviser Association; or
- (6) Such other professional designation as the administrator may by rule or order recognize.

(d) Application for Waiver. Applicant waiver eligibility under subdivisions (a) and (c) of section 11.7 shall be automatically directed to the Department of Law for evaluation and approval through the Form U4 submission in CRD/IARD. All requests for special waivers under subdivision (b) of section 11.7 must be submitted directly to the Department of Law on Form NY-IASW at the time of submission of the Form U4, unless otherwise directed by the Department of Law. Nothing in this section shall automatically revoke any examination waiver granted by the Department of Law prior to February 1, 2021 pursuant to Form NY-IAQ.

§ 11.8 Filing fees

(a) The fees for initial and annual renewal registrations under this Part are \$ 200 and must be paid through CRD/IARD.

§ 11.9 Record keeping requirements

(a) All of the following books and records must be maintained and preserved in an easily accessible place for a period of not less than five (5) years from last transaction or publication, the first two (2) years in an appropriate office of the investment adviser. Before ceasing operations, the investment adviser must arrange for maintenance and preservation and be responsible for all books and records for the full period described above:

- (1) Journals, ledgers and underlying documentation for entries; annual financial statements (including trial balances and internal working papers), business tax returns (income & employer taxes);
- (2) Check books, bank statements, canceled checks, reconciliations;
- (3) All bills and statements, paid or unpaid;
- (4) Employment records. Records should include, but are not limited to, a list of all individuals who give investment advice on behalf of the applicant in this jurisdiction;
- (5) Record of complaints organized by complainant. These records should include, but are not limited to any regulatory or disciplinary action against any individuals who give investment advice on behalf of the applicant in this jurisdiction;
- (6) A list or record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client;
- (7) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication that the investment adviser circulates or distributes, directly or indirectly to five (5) or more persons. If purchase or sale of a specific security is recommended and the reason is not stated, there must be a memorandum indicating the reason. The investment adviser is not required to keep a record of the names and addresses the notice, circular, letter or other communication is sent to, except if it is distributed to persons named on any list, then a memorandum describing the list and its source should be retained with the notice, circular, letter or other communication;

- (8) All written agreements entered into by the investment adviser with the client or otherwise relating to the business of the investment adviser;
- (9) Record of every transaction in a security in which the investment adviser has or by reason of such transaction acquires, any direct or indirect beneficial ownership (not including accounts over which the investment adviser has no control or influence or transactions in securities which are direct obligations of the United States). The record shall state the title and amount of security involved; date and nature of transaction; price at which it was effected; name of broker, dealer or bank. The transaction must be recorded not later than ten (10) days after the end of the calendar quarter in which the transaction was effected. The record may contain the statement that this is not an admission of direct or indirect beneficial ownership in the security;
- (10) A copy of each written statement and each amendment or revision, given or sent to any client or prospective client and a record of the dates that each written statement, was given or offered;
- (11) All accounts, books, internal working papers and any other records or documents necessary to form the basis for or to demonstrate the calculation of the performance or rate of return of any or all managed accounts or securities recommendations in any notice, circular or letter. Investment records including documentation and verification of all claims of investment performance record or any projections made to client(s);
- (12) Certificates or other documentation for continuing education;
- (13) Client file should contain:
- (i) Written contract--must be original;
 - (ii) All correspondence to or from client;
 - (iii) All powers of attorney and any other evidence of the granting of discretionary authority;
 - (iv) Memorandum of each order given by investment adviser for purchase or sale of any security; any instruction from the client concerning the purchase, sale, delivery or receipt of a particular security, and of any modification or cancellation of orders or instructions. (Must show terms and conditions of the order,

instruction, modification or cancellation, identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order, the account, the date, entity that executed it, duly noted if entered pursuant to discretionary power);

(v) Brokerage, bank statements;

(vi) All written acknowledgements of receipt obtained from clients and copies of disclosure documents;

(vii) Risk analysis for each client;

(viii) Records of fees charged, collected;

(ix) Recommendations to clients including but not limited to portfolio review analyses;

(x) Investments made on behalf of clients;

(xi) If known--name of client broker, bank, accountant, insurance agent, prior investments, real estate, mortgages, amounts of coverage, assumed tax brackets, significant family relationships including ages;

(xii) Assets managed;

(xiii) Unusual material items affecting cash flow;

(xiv) Person responsible for the account;

(xv) Record of ending relationship, date; and

(xvi) Documentation of each client's financial assets and income that support any designation made or acknowledged by the Investment Adviser of such client as an "accredited investor" (17 C.F.R. 230.501) or "qualified client" (17 CFR § 275.205-3) as those terms are defined under federal law. The investment adviser shall make and maintain documents evidencing reasonable steps to verify any designation as "accredited investor" or "qualified client" and maintain all documents reviewed in the course of such verification.

(14) Investment advisers with custody or possession of securities or funds of any client must additionally keep the following records:

- (i) Journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to such accounts;
- (ii) Separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each such purchase and sale, and all debits and credits;
- (iii) Copies of confirmations of all transactions affected by or for the account of any such client; and
- (iv) A record for each security in which any client has a position showing the name of each client having any interest in each security, the amount or interest of each such client, and the location of each security.

(15) Investment advisers who render investment supervisory or management service must keep the following records (with respect to the portfolio):

- (i) Records showing separately for each such client the securities bought and sold, the date, amount and price of each such purchase and sale; and
- (ii) For each security in which the client has a current position, information from which the investment adviser can promptly furnish the name of such client and the current amount or interest of such client.

(16) Upon the Department of Law's request for any records maintained pursuant to this section, such records shall be filed with the Investor Protection Bureau of the Department of Law within ten (10) business days of such request or within a timeframe otherwise agreed to by the Department of Law.

11.10 Filing of investment advisory literature and advertisements.

(a) All investment advisers who shall sell to clients or prospective clients investment advisory literature in this State, shall mail or transmit to the Department of Law on the date of the first general distribution to the investing public one copy of such literature.

(b) Every investment adviser who shall in this State, publish, give publication to, or make general distribution of any notice, circular, advertisement, form letter or other advertising communication for the purpose of soliciting investment advisory accounts or clients, whether in writing or by radio or television broadcast, shall file with the Department of Law one copy thereof as promptly as is reasonably possible, but not later than five days after such advertisement, notice, circular, letter or other advertising communication has been made.

(c) Investment supervisory services, and that part of any regular investment advisory business constituting the same, are not required to file with the Department of Law under the foregoing paragraphs personalized letters, presentations or other literature, issued in servicing of investment supervisory accounts, distributed to clients.

§ 11.11 Withdrawal of registration

(a) The application for withdrawal of registration as an investment adviser or solicitor shall be completed by following the instructions on Form ADV-W (Notice of Withdrawal from Registration as Investment Adviser) (17 C.F.R. 279.2) and filed upon Form ADV-W with CRD/IARD. Instructions for Form ADV-W are published by the U.S. Securities and Exchange Commission, 100 F Street, NE Washington, DC 20549 and are viewable at <https://ag.ny.gov/forms>.

(b) The request for termination of registration as an investment adviser representative shall be completed by completing Form U5 on CRD/IARD.

§ 11.12 Definitions

(a) A single client or a single person for purposes of section 359-eee(a)(5) shall mean

(1) a natural person, and:

(i) Any minor child of the natural person;

(ii) Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;

(iii) All accounts of which the natural person and/or the persons referred to in this paragraph (a)(1) are the only primary beneficiaries; and

(iv) All trusts of which the natural person and/or the persons referred to in this paragraph (a)(1) are the only primary beneficiaries;

(2)

(i) A corporation, general partnership, limited partnership, limited liability company, trust (other than a trust referred to in subparagraph (a) (1) (iv) of this section), or other legal organization (any of which are referred to hereinafter as a "legal organization") that receives investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members or beneficiaries (any of which are referred to hereinafter as an "owner"); and

(ii) Two (2) or more legal organizations referred to in subparagraph (a) (2) (i) of this section that have identical owners.

(3) Special rules. For purposes of this section:

(i) An owner must be counted as a client if the investment adviser provides investment advisory services to the owner separate and apart from the investment advisory services provided to the legal organization, provided, however, that the determination that an owner is a client will not affect the applicability of this section with regard to any other owner.

(ii) An owner need not be counted as a client of an investment adviser solely because the investment adviser, on behalf of the legal organization, offers, promotes, or sells interests in the legal organization to the owner, or reports periodically to the owners as a group solely with respect to the performance of, or plans for, the legal organization's assets or similar matters;

(iii) A limited partnership or limited liability company is a client of any general partner, managing member or other person acting as investment adviser to the partnership or limited liability company; and

(iv) Any person for whom an investment adviser provides investment advisory services without compensation need not be counted as a client.

(b) Federally covered investment adviser means a person who is registered under section 203 of the Investment Advisers Act of 1940, 15 U.S.C. § 80 (B) et seq.

(c) Financial institution shall mean:

(1) a bank as defined under General Business Law § 359-e; or

(2) credit union, or similar institution that is organized or chartered under the laws of a State or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a State or the United States if its deposits or share accounts are insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law. The term does not include:

(A) an insurance company or other organization primarily engaged in the business of insurance;

(B) a Morris Plan bank; or

(C) an industrial loan company.

(d) General distribution shall mean a distribution to more than five (5) persons in this State at any one time.

(e) Institutional buyer shall mean any of the following, whether acting for itself or for others in a fiduciary capacity:

- (1) a depository institution or international banking institution;
- (2) an insurance company;
- (3) a separate account of an insurance company;
- (4) an investment company as defined in the Investment Company Act of 1940 (15 U.S.C.A. § 80a-3);
- (5) a broker-dealer registered under the Securities Exchange Act of 1934;
- (6) an employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of \$ 10,000,000 or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. § 1102(a)), that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this Act, a depository institution, or an insurance company;
- (7) a plan established and maintained by a State, a political subdivision of a State, or an agency or instrumentality of a State or a political subdivision of a State for the benefit of its employees, if the plan has total assets in excess of \$ 10,000,000 or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in ERISA (29 U.S.C. § 1102(a)), that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this Act, a depository institution, or an insurance company;
- (8) a trust, if it has total assets in excess of \$ 10,000,000, its trustee is a depository institution, and its participants are exclusively members of plans of the types identified in subparagraph (6) or (7) of this subdivision, regardless of size of assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;

- (9) an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3), a corporation, Massachusetts or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$ 10,000,000;
- (10) a small business investment company licensed by the Small Business Administration under section 301 (c) of the Small Business Investment Act of 1958 (15 U.S.C. section 681(c)) with total assets in excess of \$ 10,000,000;
- (11) a private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940 (15 U.S.C. section 80b-2(a)(22)) with total assets in excess of \$ 10,000,000;
- (12) a federally covered investment adviser acting for its own account;
- (13) a qualified institutional buyer as defined in Rule 144A(a)(1) (17 C.F.R. 230.144A(a)(1)) other than Rule 144A(a)(1)(H) (17 C.F.R. 230.144A(a)(1)(H)), adopted under the Securities Act of 1933;
- (14) a major United States institutional investor as defined in Rule 15a-6(b)(4)(i) (17 C.F.R. 240.15a-6(b)(4)(i)) adopted under the Securities Exchange Act of 1934;
- (f) Investment adviser shall mean any person who, for compensation, engages in the business of advising members of the public, either directly or through publications or writings within or from the State of New York, as to the value of securities or as to the advisability of investing in, purchasing, or selling or holding securities, or who, for compensation and as a part of a regular business issues or promulgates analyses or reports concerning securities to members of the public within or from the State of New York.
- (g) Investment adviser representative shall mean a natural person who represents:
- (1) an investment adviser or solicitor in performing any of the acts that define an investment adviser under GBL § 359-eee(1)(a) or,
- (2) a federally covered investment adviser from a place of business in the State and who satisfies the requirements of Rule 203A-3 (17 CFR § 275.203A-3) adopted under the Investment Advisers Act of 1940.

- (h) Investment supervisory service shall mean any person giving continuous advice as to the investment of funds on the basis of individual needs of each client.
- (i) Person shall mean a natural person, corporation, company, partnership, trust or association.
- (j) Principal shall mean and include every person or entity directly or indirectly controlling an investment adviser or solicitor. Principals are subject to the same registration and examination requirements of investment adviser representatives under this part.
- (k) Solicitor shall mean a person who as part of a regular business, engages in the business of providing investment advice to the limited extent that such person receives compensation for introducing a prospective investor or investors to an investment adviser or a federally covered investment adviser, unless such person would be excluded from the definition of investment adviser under an enumerated exception under GBL § 359-eee(1)(a) or § 11.13 of this part. Solicitors are subject to the same registration and examination requirements as investment advisers, and principals and representatives of solicitors are subject to the same registration and examination requirements as investment adviser representatives, under this part.
- (l) Supervisor shall mean a natural person who directly supervises one or more natural persons associated with an investment adviser in their capacity as investment adviser representatives.

§ 11.13 Exclusions and Exemptions

(a) The following are excluded from the definition of “investment adviser” under 11.12(f) of this Part and are not subject to the registration provisions of GBL § 359-eee and the regulations issued thereunder:

(1) A bank or trust company, unless it is considered an investment adviser under the Investment Advisers Act of 1940;

(2) A lawyer, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of this profession;

(3) A broker or dealer whose performance of these services is solely incidental to the conduct of its business as broker or dealer and who receives no special compensation for them;

(4) A publisher of a bona fide newspaper or news magazine;

(5) A person who sells investment advisory services to less than six (6) persons in this State exclusive of financial institutions and institutional buyers; and

(6) A federally covered investment adviser.

(b) The following investment advisers are exempted from the registration provisions and the advertising and literature filing provisions of GBL § 359-eee and the regulations issued thereunder;

(1) a person who gathers raw data from one (1) or more sources and publishes it in chart form without comment as an information source to investors; and

(2) a person who renders investment advice for compensation solely in the form of seminars attended by more than five (5) persons in this State.

§ 11.14 Financial statements.

(a) Financial statements of an investment adviser shall be prepared in accordance with generally accepted accounting principles including reserves or liabilities for unfulfilled subscriptions. Where financial statements

are unaudited by an independent public accountant, a certification by management is required attesting to the accuracy of such statements. Nothing in this regulation shall abrogate the requirement, set forth in form ADV: part 2A, item 18 A.1., that investment advisers charging certain fees six months or more in advance must submit audited financial statements.

(b) Each investment adviser filing an initial registration through the IARD shall submit a balance sheet and an income statement as of the close of its last fiscal or calendar year as prepared by the adviser's accountant or by management. Where the financial statements submitted are more than 90 days old, an interim balance sheet no more than 90 days old shall also be submitted directly to the Department of Law.

(c) Annually, each registered investment adviser shall submit a balance sheet and an income statement as of the close of its last fiscal or calendar year within 90 days after completion of its fiscal or calendar year end directly to the Department of Law.

§ 11.15 Distribution of investment adviser statement.

Each investment adviser registered in the State of New York must:

(a) deliver to a client or prospective client either a copy of the investment adviser statement form ADV, or a brochure containing all of the information set forth therein, before or at the time of entering into an investment advisory contract with that client; and

(b) deliver to each client, annually within 120 days after the end of the fiscal year of such adviser, and without charge, if there are material changes in such statement or brochure since any annual updating amendment:

(1) a current statement or brochure; or

(2) the summary of material changes to any statement or brochure as required by item 2 of form ADV, part 2A that offers to provide your current brochure without charge, accompanied by the web site address (if available) and an e-mail address (if available) and telephone number by which a client may obtain the current statement or brochure from you, and the web site address for obtaining information about you through the investment adviser public disclosure (IAPD) system.

§ 11.17 Forms

All forms are available on the Department of Law's website at <https://ag.ny.gov/forms>.

(a) Form ADV.

Uniform Application for Investment Adviser Registration, parts 1 and 2.

(b) Form ADV-H.

Application for Temporary or Continuing Hardship Exemption.

(c) Form ADV-W.

Notice of Withdrawal From Registration as Investment Adviser.

(d) Form NY-IAQ.

New York Investment Adviser Qualification. (Retired).

(e) Form U4.

Uniform Application for Securities Industry Registration or Transfer.

(f) Form U5.

Uniform Termination Notice for Securities Industry Registration.

(g) Form NY-IASW.

New York Special Waiver Qualification Under 13 NYCRR 11.7(b).

§ 11.18 Denial, Suspension, Conditioning and Revocation of Registration Statements and Applications

(a) The attorney general may by order, deny, suspend, condition, or revoke any registration statement or application of any investment adviser, investment adviser representative, solicitor or principal made pursuant to GBL § 359-eee, in the public interest for good cause.